GIFTS—VALIDITY—EXTENT OF GIFT.—The extent of the power of a parent to make gifts to a child was considered in the case of Pearce v. Stines.[1] An old man of more than eighty years, about seven weeks before his death, delivered a deed to the house and lot in which he lived to a daughter. A son of the donor charged that this gift was void as being obtained by undue influence at a time when, by reason of his mental and physical infirmities, the donor did not possess sufficient mind to understand in a reasonable manner the nature and effect of his act. The evidence seemed to show that at the time the gift was made the donor, though ill and physically very weak, thoroughly understood what he was doing. There was no proof that any undue influence had, in fact, been exerted. The house and lot included in the deed were valued at about three thousand dollars, and the rest of the decedent's real estate, all unimproved, at about thirty-seven hundred dollars. He had practically no personal property. As against this he owed debts of almost three thousand dollars to the complainant. On these facts the complainant argued that inasmuch as the property included in the deed was the most valuable part of the donor's property, that on which he depended for shelter and support, the gift was void. The court so held, and set aside the gift.

Where a confidential relation exists between the donor and the donee, the donee being the dominant party in the relation, the law scrutinizes with jealousy a gift from the former to the latter, and such transaction is presumptively void, the burden being on the donee to show its absolute fairness.[2] As between parent and child, the former is presumed to be the dominant party. So a gift from parent to child is not of itself sufficient to raise a presumption of undue influence.[3] A parent who does occupy such dominant position may give away as much of his property as he pleases.[4]

When, however, the parent, through the infirmity of old age or illness, ceases to be the dominant party, the child must remove any doubt as to the existence of undue influence.[5] The extent of the proof required of the donee depends upon the proportion which the subject-matter of the gift bears to the donor's entire estate. If the amount of the gift is not so great as to denude the donor of his means of existence, the donee need show only that the gift was born of the untrammeled will of the donor, and not of the domination of the donee.[6] But when the gift has the effect of stripping the donor of all or practically all of his property, the donee is required to show more than an absence of influence on his own part.

[1] 80 Atl. 941 (N. J. 1911).

[2] Hasel v. Beilstein, 179 Pa. 560 (1897).

[3] Sanders v. Gurley, 44 So. 1022 (Ala. 1907).

[4] James v. Aller, N. J. Eq. 666 (1904).

[5] Le Gendre v. Goodridge, 46 N. J. Eq. 419 (1889).

[6] Haydock v. Haydock, 34 N. J. Eq. 570 (1881), as interpreted by Post v. Hagen, 71 N. J. Eq. 234 (1906).

He must prove, in addition, that the donor had competent and independent advice as to the effect of his act.[7]

In Post v. Hagan,[8] the court said: "Proper independent advice in this connection means that the donor had the preliminary benefit of conferring fully and privately upon the subject of his intended gift with a person who was not only competent to inform him correctly as to its legal effect, but who was furthermore so dissociated from the interests of the donee as to be in a position to advise with the donor impartially and confidently as to the consequences to himself of his proposed benefaction."

Applying this rule to our principal case, the decision was inevitable. For there was here no form or semblance of such advice, and the subject-matter of the gift represented about all the property that the donor owned over and above his debts.

The public policy upon which such a rule is founded is apparent. It is just and reasonable that it should not be possible for those who, by old age or illness, may be deprived of their mental vigor, to deprive themselves of their means of support, even in the absence of irresistible importunities, unless advised so to do by disinterested and competent parties. It is, therefore, not surprising to find the authorities outside of New Jersey agreeing with such a rule.[8] It is submitted that what few cases hold that the receipt of such advice is not necessary, are really cases in which the donor and donee did not stand in a confidental relation at all.

The interesting question which arises is as to how much a donor may give, without bringing himself within this rule. The court in our principal case wisely remarks that the question is not so much one of definite fractions, as of practical results. Judge Stephens goes on to say: "I think the practical rule . . . is, that a donor, having barely sufficient property to sustain himself for the rest of his life, shall not irrevocably and without advice, give away so much of it as to leave himself an object of charity." This seems eminently reasonable.

P. V. R. M.

NEGLIGENCE—LIABILITY OF A RAILROAD COMPANY, AND OF THE CONSIGNEE TO WHOM IT HAS DELIVERED A DEFECTIVE CAR, FOR INJURY TO THE CONSIGNEE'S SERVANT.—In the recent Massachusetts case of D'Almeida v. Boston & M. R. R.,[1] a railroad delivered a number of cars loaded with coal to a milling company upon a sidetrack. In pursuance of an arrangement with the railroad, certain

[7] Coffey v. Sullivan, 49 Atl. 420 (N. J. 1901). Slack v. Rees, 66 N. J. Eq. 447 (1903), as interpreted by Post v. Hagen, *supra*.

[8] Caspari v. The First German Church of the New Jerusalem, 82 Mo. 649 (1884); Gibson v. Hammaug, 63 Neb. 349 (1901).

[8] Soberaues v. Soberaues, 97 Cal. 140 (1893); Couchman's Adm. v. Couchman, 98 Ky. 109 (1895).

[1] 95 N. E. Rep. 398 (Mass. 1911).